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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3585 OF 2004

The Oriental Insurance Company Ltd.)..Petitioner

Versus

Union of India and others)..Respondents

Mr.Asim S. Vidyarthi for the Petitioner.

None present for Respondent Nos.1 to 3.

Mr.A.S. Rao for Respondent No.4.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 1ST MARCH 2006

P.C.:

. By this Petition, the Petitioner-Oriental Insurance Company Limited, has challenged the order dated 19th August 2003 passed below the application dated 28th June 2003 passed by the Sole Arbitrator as well as the order dated 20th December 2003 passed by the Extra Joint District Judge, Pune in Misc. Civil Appeal No.309 of 2003. The parties had agreed under the insurance policy that the "agreed bank" would be Bombay Mercantile Co-operative Bank Limited as the Bank. The Sole Arbitrator while making the order has directed that the amount which is payable by the Insurance Company should be deposited in Muslim Co-operative Bank and not Bombay Mercantile Co-operative Bank Limited. The Petitioner, aggrieved by this order, had challenged the

same before the District Court. However, the District Court has mainly decided that it has the jurisdiction to decide the Appeal filed against the order of the Arbitral Tribunal passed under Section 37 of the Arbitration and Conciliation Act, 1996. The Court has held that the Insurance Company had not succeeded in pointing out any infirmity in the order of the Sole Arbitrator.

2. A bare perusal of the insurance policy which is annexed to the Petition and the "agreed bank" clause indicates that the Bank mentioned is Bombay Mercantile Co-operative Bank Limited. The reason given by the Arbitrator for directing deposit to be made in Muslim Co-operative Bank is unsustainable. In my view, therefore, the amount must be deposited in the agreed bank i.e. Bombay Mercantile Co-operative Bank Limited. Hence, the impugned orders are modified to that extent.

3. The Insurance Company shall deposit the entire amount as directed by the Sole Arbitrator within four weeks with Bombay Mercantile Co-operative Bank Limited. Once this deposit is made, the Petitioner is permitted to withdraw the amount deposited in this Court after satisfying the Registry that the deposit as aforesaid has been made with the Bombay Mercantile Co-operative Bank Limited.

4. Writ Petition disposed of accordingly.